IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 330 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MULCHANDBHAI I PATEL

Appearance:
MR.B.D. DESAI, A.P.P for Petitioner
NOTICE SERVED for Respondent No. 1
MR M.J. BUDHBHATTI for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 02/05/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. Initially the State had filed this acquittal appeal under Section 378 of the Code of Criminal Procedure, 1973, challenging the acquittal of the two respondents i.e. Mulchandbhai Ishwarbhai Patel and Jayantkumar V. Jani, of the offences punishable under Sections 161, 165 (A) I.P.C. and Section 5 (1) of the Prevention of Corruption Act, recorded by the the learned Special Judge, Bhavnagar, in Special Case No.3/86, vide judgement dated January 23, 1990. Respondent No.1 i.e. Mulchandbhai I. Patel, expired on February 18, 2001, before the appeal was taken up for final hearing. Therefore, Ms.Nehaben Mulchandbhai Patel who is daughter of Mulchandbhai had filed Miscellaneous Criminal Application No.2556/2001 seeking declaration that the appeal had abated against the deceased Mulchandbhai in terms of Section 394 of the Code of Criminal Procedure. By an order dated April 30, 2001, the Division Bench comprising K.R. Vyas, R.P. Dholakia, JJ has held that the appeal against the original respondent No.1 i.e. Mulchandbhai I. Patel has abated. Under the circumstances, in this appeal, we are required to consider the case of the prosecution against respondent No.2 only.

2. Dayabhai Gobarbhai, who is original complainant is resident of village Hathab and owns agricultural lands. Land bearing survey No.113/6 owned by Dayabhai is just near the land bearing survey No.113/7, belonging to Rukhad Ranchod. On the Sheda of the field there were certain trees which according to Rukhad belonged to him. He had therefore marked a line demarcating the fields belonging to him. The complainant was of the opinion that Rukhad had encroached upon his land and attempts made by him to settle the dispute amicably had failed. The complainant therefore approached D.I.L.R., Bhavnagar, and applied for survey of his land, so as to ascertain as to whether in fact, Rukhad had encroached upon his land or not and what was the extent of encroachment. According to him he had deposited Rs.150/- being the survey fee, but survey was not carried out. He had therefore, approached the deceased respondent No.1 who was then serving as District Inspector, Land Records and it is his case that the deceased respondent No.1 had demanded illegal gratification of Rs.200/- on January 1, 1985, for carrying out the survey. The complainant had approached the office of Anti Corruption Bureau, where his complaint was registered by Mr.Janak Vyas, who was then P.S.I. on duty. The P.S.I. had obtained necessary

permission from the learned Chief Judicial Magistrate, Bhavnagar for carrying out raid. Two panchas were called and made to understand the grievance of the complainant. The complainant was instructed to go to the office of the respondent No.1, and give the amount of bribe money on demand. It is the case of the prosecution that the complainant in the company of members of the raiding party had gone to the office of respondent No.1, and on demand being made the complainant had handed over the currency notes of Rs.200/- to respondent No.1, and on signal being given other members of the raiding party had rushed in the office of respondent No.1. What is claimed by the prosecution is that that the notes smeared with anthracene powder were not found from the person of respondent No.1, but were recovered from the cupboard of respondent No.2 who had concealed the same, at the instance of respondent No.1. At the conclusion of the investigation the respondents were charged of the offences punishable under Sections 161, 165 (A) I.P.C. and Section 5 (1) of the Prevention of Corruption Act. The charge was read over and explained to the respondents who had pleaded not guilty to the same and claimed to be tried. Therefore the prosecution had led oral as well as documentary evidence in support of its case against the respondents. After recording of evidence of prosecution witnesses was over, further statement of the respondents were recorded as required by Section 313 of the Code of Criminal Procedure. In their further statement, what was claimed by the respondents was that a false case was concocted against them and that they should be acquitted. On appreciation of evidence led by the prosecution, the learned Special Judge has disbelieved the case of the prosecution and acquitted the respondents by judgment dated January 23, 1990 giving rise to the present appeal.

3. Mr.B.D. Desai, learned A.P.P. after taking us through the entire evidence on record, submitted that the evidence of the complainant gets corroboration from the contents of his complaint as well as from the evidence of panch witness and investigating officer and, therefore, the appeal should be accepted. Mr.M.J.Budhbhatti, learned counsel for respondent No.2 pleaded that cogent reasons have been given by the learned Judge for disbelieving the case of the prosecution and the appeal being substanceless should be dismissed.

4. We have heard the learned counsel for the parties and reappreciated the evidence on record. The evidence of panch witness would indicate that a case of misappropriation was lodged against him and punishment of withholding of two increments was imposed on him. It

means that a panch having bad antecedent was selected by the investigating officer, while carrying out the raid. The evidence further shows that the deceased respondent No.1 was on inimical terms with the collector and his other staff members and therefore the panch who was serving in the office of respondent No.1 was selected as one of the panchas. The evidence of the complainant would indicate that he had gone to the house of the respondent No.1 to present groundnut pods, but he was insulted and driven out by respondent No.1, which means that, the complainant had grudge against respondent No.1. The evidence on record unerringly establishes that no demand of illegal gratification was made nor illegal gratification was accepted by the deceased respondent No.1, in the presence of panch witnesses. In fact, the complainant had prevented the panchas from accompanying him when he had gone to the office of respondent No.1 for giving bribe money. The record shows that the amount of Rs.200/- was accepted as survey fee and was never accepted as illegal gratification. The evidence of witness Ajitbhai R. Pandya would indicate that the deceased respondent No.1 was an honest officer and was discharging his functions loyally, sincerely as well as strictly and, therefore, he had made many enemies in his office. In fact, the evidence shows that the whole raid was arranged by complainant Dayabhai with the help of peon Hasmukhbhai Dhirajlal who was posted in the office of respondent No.1, and who was rebuked by respondent No.1 on several occasions. The prosecution has not led any convincing evidence to establish that respondent No.2 had abated the deceased respondent No.1 in committing offences punishable under Indian Penal Code and Prevention of Corruption Act. The learned Special Judge has given cogent and convincing reasons for disbelieving the prosecution case which are to be found in paragraphs 11 to 15 of the judgment and we fully endorse the same. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case pointed out by the learned Judge go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of witnesses. As we are in general agreement with the view expressed by the learned Judge. We do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in

the facts of the present case. This is so, in view of the decision rendered by the Supreme Court in the case (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967, S.C. 1124, and (2) State of Karnataka v. Hema Reddy and anothers, A.I.R. 1981 S.C.1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodged the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge

For the foregoing reasons the appeal fails and is dismissed. Mudammal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgement.

(J.M. Panchal, J).

(S.D. Dave, J).

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